IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,	)	NO. 61527-1- I
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
KENNETH MELVIN WYATT, JR.,	)	
	)	
Appellant.	)	FILED: August 3, 2009

BECKER, J. — Appellant Kenneth Wyatt was convicted of burglary in the first degree. Wyatt claims the evidence was insufficient to show that he intended to commit a crime when he broke into his estranged wife's residence. Considered in the light most favorable to the State, the evidence shows that Wyatt was angry when he broke the door down and that he slapped Tana Wyatt as soon as he entered the residence. A jury could reasonably infer that he

broke in with the intent to commit assault. The conviction is affirmed.

The State charged Wyatt with burglary in the first degree. Trial began on March 3, 2008. According to trial testimony, in the evening of August 1, 2007 Tana was at her residence with her roommate Kimberly Childers. Tana was taking the garbage outside when she spotted a vehicle belonging to Wyatt, parked in the middle of the road. Tana looked toward the patio at the side of her house and saw Wyatt and his girlfriend looking inside the window. Tana immediately went back into the house and locked the door.

Wyatt and Tana have a son together. At the time, there was no court order concerning the child. The parties stipulated that both of them have legal custody of the child and that neither one has a legal obligation to hand over the child if the other demands it.

Tana testified that Wyatt began to bang repeatedly on the door demanding to see their son. She told him, through the door, to leave and that their son was not there. Wyatt refused to leave and eventually kicked down the door. He entered the apartment and shouted "Where's my mother-fucking son?" Wyatt then crossed the living room to where Tana was standing in front of the couch and slapped her in the face.

Tana testified that she again told Wyatt to leave. She picked up the telephone and called 911. Meanwhile, Wyatt was walking through the residence

searching for their son. She followed him telling him that their son was not there and that he needed to leave. Wyatt left the residence before the police arrived.

Childers testified that she was in her bedroom during the incident. She heard Wyatt's shouts, the crash of the door, and the slap. Wyatt presented testimony from his mother, girlfriend, and a close friend that Wyatt was at his mother's house during the time of the alleged incident.

The jury was instructed on the elements of burglary in the first degree:

> To convict the defendant of the crime of burglary in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about 1st Day of August, 2007, the defendant unlawfully entered or remained unlawfully in a building;
> (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
> (3) That in so entering or while in the building or in immediate flight from the building the defendant assaulted a person, Tana Wyatt; and
> (4) That the acts occurred in the State of Washington.

Jury Instruction 11. The jury was also given a standard instruction on the definition of assault. The jury found Wyatt guilty as charged. The court sentenced him to 21 months.

Wyatt appeals, claiming that the State presented insufficient evidence to prove that he entered or remained in a building unlawfully with the intent to commit a crime.

The standard of review for sufficiency of the evidence is, after viewing the

evidence in a light most favorable to the State, to ask whether any rational trier or fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

"Although intent may not be inferred from conduct that is patently equivocal, it may be inferred from conduct that plainly indicated such intent as a matter of logical probability." State v.Bergeron, 38 Wn. App. 416, 419, 685 P.2d 648 (1984). Wyatt contends his conduct was "patently equivocal" and that a jury could just as logically infer that he broke into the home to see his son as to assault Tana.

Wyatt argues that his case is comparable to State v. Sandoval, 123 Wn. App.1, 94 P.3d 323 (2004). There the defendant kicked open an apartment door. The occupant confronted him and Sandoval gave him a shove. Sandoval was convicted of first degree burglary. The conviction was reversed on appeal. The court concluded the evidence did not support a logical inference that he intended to commit a crime inside the apartment.

> [T]here is no fact, alone or in conjunction with others, from which entering with intent to commit a crime more likely than not could flow. The parties were strangers. The assault was a shove after entering. Mr. Sandoval did not try to sneak in. He was not wearing burglary-like apparel or carrying burglary tools. He did not attempt to flee. [The victim] noted: "It's not like he was in a hurry to get out." Mr. Sandoval did not try to take any of [the victim]'s property or confess to doing so. The inference of intent to commit the crime of first degree burglary does not then flow more probably than not

from the breaking and entering here.

(Citations omitted.) Sandoval, 123 Wn. App. at 5-6,

Certain facts that were key in Sandoval are not present here. In Sandoval the defendant was very intoxicated, he did not know anyone was in the apartment, and he assaulted the resident only after he was confronted. Sandoval, 123 Wn. App. at 3. None of the defendant's actions clearly indicated that he entered the apartment intending to commit a crime once inside. In contrast, Wyatt knew Tara was inside, and he forcefully entered the residence after repeated refusals from Tana to allow him entry. Although Wyatt was heard to ask for his son, the first action he took upon entering the apartment was to cross the room to where Tana was standing and slap her face. Only then did he proceed to look for his son.

The State relies on State v. Powell, 139 Wn. App. 808, 162 P.3d 1180 (2007). In Powell the court affirmed Powell's conviction of attempted burglary in the first degree. The defendant argued that the evidence was insufficient to prove intent to commit a crime. He claimed that he was at the residence to retrieve his bicycle and to exercise his equal rights to see his son. The court concluded that it was irrelevant that the defendant had equal rights to the child because the surrounding circumstances supported the inference that had Powell gained entry into the residence, he would have harmed the victim to get to his

son. Powell, 139 Wn. App. at 816.

Wyatt contends his case is unlike Powell, because in that case the defendant had a loaded gun with him and there was evidence that he had previously threatened his wife. Although the facts here are less extreme, nevertheless the inference of intent is supported by more than the mere fact of Wyatt's forcible entry into the home. As in Powell, the possibility that he came to the house with the lawful purpose of visiting his son "did not prevent the State from arguing, and the jury from finding, that he intended harm" to his wife. Powell, 139 Wn. App. at 816.

We conclude that in viewing the evidence in the light most favorable to the State, a reasonable jury could infer criminal intent from the surrounding circumstances.

Wyatt has filed a statement of additional grounds pursuant to RAP 10.10. It consists of two pages of barely legible notes referring to certain pages of the transcript. Several entries indicate Wyatt's view that the judge was biased. Our review of the record persuades us that the remarks made by the judge were appropriate and do not reflect bias. Wyatt's apparent mistrust of testimony offered by the State does not raise an issue for appeal because this court defers to the trier of fact on issues of credibility of testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. J.P., 130 Wn. App. 887, 891-

92, 125 P.3d 215 (2005). The other matters noted by Wyatt are also insufficient to identify additional grounds for review.

Affirmed.

Becker, J.

WE CONCUR:

Schindler, C.J. Appelwick, J.